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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-22-105

NATALIE EDWARDS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered October 26, 2022

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
EIGHTH DIVISION
[NO. 60JV-20-585]

HONORABLE TJUANA C.
BYRD, JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

Natalie Edwards appeals the order of the Pulaski County Circuit Court terminating her parental rights to her four children. On appeal, appellant argues that the circuit court erred in denying her motion for a continuance and in finding sufficient evidence to terminate her parental rights. We affirm.

On August 6, 2020, the Arkansas Department of Human Services (DHS) exercised an emergency hold on appellant's four children: fourteen-year-old MC1 (minor child 1), eight-year-old MC2 (minor child 2), two-year-old MC3 (minor child 3), and seven-month-old MC4 (minor child 4). MC1 was allegedly being allowed to have a sexual relationship with an older boyfriend. MC1 was living with her grandmother, who attempted to prevent DHS from contacting MC1. MC2 had been living with his father, Damon Casey, who tested positive for methamphetamine. The two younger children had been living with

appellant, but she was not truthful with DHS about their living arrangements. Appellant did not have stable housing and tested positive for methamphetamine. At the probable-cause hearing, the court noted that this was the second time the two older children had been in foster care due to parental drug use. Two of the children had hair long enough to be drug tested, and they tested positive for methamphetamine. All four children were adjudicated dependent-neglected due to parental unfitness, neglect, and educational neglect. The goal was reunification with appellant.

When the case was reviewed in January 2021, the court found that DHS had failed to make reasonable efforts to provide the family with services and finalize a permanency plan for the juveniles. Specifically, MC1 had not been referred for therapy or moved from her shelter placement as ordered at the adjudication hearing, the children had not received their clothing vouchers, and referrals for the parents had not been made in a timely manner. Appellant had told her caseworker that she would be entering drug treatment at Mary's House of Restoration, but appellant testified that she had not yet entered because she needed to complete a crisis-stabilization program first.

When the case was reviewed again in April, the court found that DHS had complied with the case plan and court orders and made reasonable efforts to provide family services towards the goal of reunification. Although the children were in separate foster homes, DHS had made reasonable efforts to place them together and ensure they have sibling visitation. Appellant was found to be in partial compliance with the case plan and court orders. She had completed inpatient drug treatment and her psychological evaluation. She had not completed parenting classes, individual counseling, or her hair-follicle drug test, and

she did not have stable housing. The court found that she needed to participate in outpatient services to demonstrate long-term sobriety. The court also noted that since the last hearing, appellant had lost contact with DHS for approximately one month.

A permanency-planning hearing was held on August 3, 2021, at which time the court changed the goal to adoption. Appellant had tested positive for methamphetamine on a hair-follicle test and testified that she last used at the end of June. Damon Casey, MC2's father, had died since the last hearing, and appellant said she had been depressed and drinking alcohol. She acknowledged that drinking made her vulnerable to relapse and said that she was trying to get into another rehab facility. She was going to counseling, but she did not have housing or employment. The court found that there was insufficient evidence to establish that appellant had made significant measurable progress or that she had benefited from the services offered.

The termination hearing was held November 2, 2021. Appellant testified that she had entered inpatient rehab at Agape House on August 27. The treatment program was four months of inpatient rehab followed by four months of intensive outpatient services. Appellant had been clean for sixty-six days since she entered treatment.¹ She was confident that her current program would work and that she would succeed and maintain sobriety. Appellant acknowledged, however, that she had completed drug treatment in the prior DHS case and a thirty-day inpatient program in March 2021, but she had failed to participate in outpatient treatment afterwards.

¹Appellant testified that alcohol was the last substance she used. She did not know her sobriety date for methamphetamine.

Appellant had obtained a job through her rehab and was able to save money for future housing expenses. After her four months of inpatient were completed, she could either reside in the rehab's step-down unit or obtain housing in the community. Appellant testified that she had completed parenting classes and that she needed a referral to start counseling in Paragould where her rehab was. Appellant acknowledged that she got a late start on her sobriety and other case goals, but she believed she could have a stable home for her children within three months. Appellant said that she had a good support system, including her mentor, Capri Payne, who was on the board of Agape House. Payne testified that she had resources to assist appellant with housing when the time came.

Caseworker Yolanda West-Calvin testified that appellant had completed all of the ordered services except rehab and individual counseling. West-Calvin noted that appellant disregarded West-Calvin's advice to continue drug treatment after her release from inpatient rehab in March, and she had relapsed. West-Calvin was concerned with appellant's late compliance considering that the present case had been opened due to drug use and that the previous case was also related to drug use. In addition to appellant's failure to maintain sobriety for an extended period of time, she had also failed to secure housing for herself or to maintain employment.

An adoption specialist testified that there were seventeen possible adoptive homes for this sibling set. Although MC1, who was sixteen years old at the time of the hearing, had expressed a desire not to be adopted, both West-Calvin and CASA volunteer Courtney Parnell testified that termination was still in her best interest. MC1 had not visited with her mother since the court ruled in April that she would not be forced to. Parnell described

MC1's relationship with appellant as "very toxic." Parnell said that all four children were doing very well in their placements.

The circuit court ruled that the termination petition would be granted on the failure-to-remedy and subsequent-factors grounds and because it was in the best interest of the children. The court found that, considering appellant's pattern of drug use, rehab, and relapse in this case and the prior DHS case, she had not exhibited sobriety and stability for a sufficient amount of time. The court recognized that appellant was having success in her current rehab, but even after three more months, she would only be two months removed from inpatient rehab, and that would not be enough time to show stability given her history. In addition to the need to show sobriety and the ability to maintain a home for the children, the court noted that appellant had received only a few therapy sessions. The court found that the case was fifteen months old, that it would be unfair to hold the children in further limbo, and that they needed permanency.²

I. Motion for Continuance

Appellant first argues that the circuit court abused its discretion in denying her motion for a continuance. At the beginning of the termination hearing, the court noted that it had neglected to appoint counsel for Justin Richie after the permanency-planning hearing. Therefore, the court continued the matter as to Richie. Appellant's attorney then moved to continue the entire case. The court replied, "I think it's a long day today or it's a long day another day. I would just as soon go ahead and hear it unless there's some

²The circuit court also terminated the parental rights of Daniel Casey, MC1's father, who did not participate in the case. The termination hearing as to Justin Richie, the father of MC3 and MC4, was continued to a later date.

compelling reason not to. If you'd see our dockets, they all look the same.” Appellant’s attorney responded, “Thank you, Your Honor.”

Appellant now argues that the circuit court acted improvidently when it summarily denied her motion without considering the facts. She argues that the court should have balanced her rights with the best interest of the children, and here, continuing the case and having one hearing pertaining to all parents would have been in the children’s best interest. She argues that she was denied the opportunity to continue to work toward reunification even though the children as a sibling group would not be available for adoption with Richie’s rights still intact. In other words, she claims that a continuance would not have affected permanency for the children.

We will not reverse the denial of a motion for continuance absent an abuse of discretion amounting to the denial of justice. *Wright v. Ark. Dep’t of Hum. Servs.*, 2018 Ark. App. 503, 560 S.W.3d 827. A circuit court abuses its discretion when it acts improvidently and without due consideration. *Id.* Additionally, in order to prevail on appeal, an appellant must demonstrate prejudice from the denial of a motion for a continuance. *Id.*

Appellant did not ask for the continuance until the beginning of the termination hearing, and she failed to provide any reason or argument as to why the continuance should be granted. Although she now argues that the court failed to consider the permanency implications with Richie’s hearing being continued, appellant did not preserve this argument below. Even if preserved, this court held that the denial of a continuance motion under similar circumstances in *Collier v. Arkansas Department of Human Services*, 2022 Ark. App. 100, 641 S.W.3d 67, was not an abuse of discretion. A motion for continuance shall

be granted only upon a showing of good cause. *Collier, supra*. Here, the court stated it would deny the motion unless there was a compelling reason to continue the hearing, and no reason was offered. We hold that there was no abuse of discretion.

II. Termination

Pursuant to Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2021), an order forever terminating parental rights shall be based on clear and convincing evidence of one or more grounds. The circuit court must also find by clear and convincing evidence that termination is in the best interest of the child, including consideration of the likelihood that the child will be adopted if the termination petition is granted and the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A).

On appeal, termination-of-parental-rights cases are reviewed de novo. *Collier, supra*. Grounds for termination must be proved by clear and convincing evidence, which is that degree of proof that will produce in the finder of fact a firm conviction of the allegation sought to be established. *Id.* The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* In resolving the clearly erroneous question, we give due regard to the opportunity of the circuit court to judge the credibility of witnesses. *Id.*

Under the failure-to-remedy ground, the circuit court may terminate parental rights if a juvenile has been adjudicated by the court to be dependent-neglected and has continued

to be out of the custody of the parent for twelve months and, despite a meaningful effort by DHS to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). Appellant argues that DHS failed to prove by clear and convincing evidence that she failed to correct her substance abuse and that DHS made a “meaningful effort” to rehabilitate her.

Appellant argues that she had corrected the conditions that caused removal because at the time of the termination hearing she had completed one inpatient program and was participating in another, she had employment, and she had options for a stable home for her and the children. Although she had relapsed in the past, she argues that relapse is part of recovery and that it does not mean that she failed to remedy the cause of her children’s removal or failed to provide them stability.³ In arguing that DHS failed to make a meaningful effort, she relies on the court’s no-reasonable-efforts finding in January 2021. She claims that because the goal was changed to adoption less than seven months later and her rights were terminated less than ten months later, DHS failed to prove the element of a “meaningful effort.”

Although appellant was sober at the time of the termination hearing, she had failed to show that she could maintain sobriety, housing, employment, and stability outside of the inpatient-rehab setting. She argues that a delay in providing services impacted the amount of progress that could be made prior to the termination hearing, but the only specific service

³As DHS notes, appellant cites an internet source for this argument, which she failed to present below. Accordingly, we do not address it. See *Strickland v. Ark. Dep’t of Hum. Servs.*, 2018 Ark. App. 608, 567 S.W.3d 870.

she references is counseling for the children. At the time of the January hearing in which the court found a lack of reasonable efforts, the testimony established that appellant was planning to enter a drug-treatment center upon her completion of a crisis-stabilization program. Accordingly, even though other services were delayed, appellant at that point had already taken steps toward remedying her drug issues. At the next two hearings, the court found that DHS had made reasonable efforts, but appellant had only partially complied with the case plan and court orders. We hold that the circuit court did not clearly err in finding sufficient proof of the failure-to-remedy ground. Because we affirm the termination on the failure-to-remedy ground, it is not necessary to address appellant's remaining arguments as to grounds.

Appellant does not specifically challenge the potential-harm or adoptability factors of best interest but instead argues that the circuit court erred in refusing to grant her a continuance or additional time to complete her drug-treatment program and demonstrate she could maintain stability and sobriety. She argues that had the court granted her motion for a continuance to the date of Richie's termination hearing, she could have completed the inpatient portion of her program. However, we note that at the time the court denied the motion for a continuance, there had been no testimony or argument regarding appellant's drug treatment and progress. Again relying on the January no-reasonable-efforts finding, appellant argues that she had only been offered ten months of reasonable efforts and that, given her progress and her bond with her children, termination was not in the children's best interest. As appellant acknowledges, however, we have held that a juvenile's need for permanency and stability may override a parent's request for additional time to improve the

parent's circumstances. *Kloss v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 389, 585 S.W.3d 725. The intent of the termination statute is to provide permanency in a child's life when return to the family home is contrary to the child's health, safety, or welfare, and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. Ark. Code Ann. § 9-27-341(a)(3). The children here had been in foster care for fifteen months. Given the history of the case, we do not think the court's best-interest finding was clearly erroneous.

Affirmed.

GLADWIN and HIXSON, JJ., agree.

Jennifer Oyler Olson, Arkansas Commission for Parent Counsel, for appellant.

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor children.